Petition

81-1892

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No.

MAJOR C. ANNE BONEN, *Petitioner*,

v.

THE UNITED STATES, *Defendant*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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QUESTION PRESENTED

Did the Court of Claims commit error in ruling that plaintiff's claim arose at the time of her discharge from the Air Force in 1965, and was thus time barred?

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No.

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THE UNITED STATES, *Defendant*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Major C. Anne Bonen, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims in this case.

OPINIONS AND ORDERS BELOW

On December 2, 1981, the Court of Claims issued its opinion granting defendant's motion for summary judgment and dismissing plaintiff's petition (Appendix A). Plaintiff thereafter moved for rehearing en banc, which was denied by the Court of Claims on January 15, 1982 (Appendix B).

JURISDICTION

The jurisdiction of this Court is invoked under 28 United States Code 1255(1).

STATUTORY PROVISIONS

28 United States Code 2501 provides, *inter alia*, that claims such as plaintiff's for military pay and allowances must be brought within six years of the date of accrual (Appendix C).

10 U.S.C. § 1552 authorizes the secretary of a military department to correct service records to remove injustices (Appendix D).

37 U.S.C. § 204 authorizes military pay.

STATEMENT OF THE CASE

This is a suit for military pay and allowances from September 9, 1965 through July 26, 1974.

Plaintiff, then an officer in the United States Air Force, was discharged on September 8, 1965 under Air Force Regulation 36-12 because she was pregnant.

On July 26, 1974, plaintiff was reappointed in the Air Force due to a change in Air Force policy regarding pregnancy as a basis for discharge. In 1976, plaintiff applied to the Air Force Board for Correction of Military Records (hereinafter AFBCMR), asking that her records be corrected as follows:

> "1. Her service and grade data be adjusted to reflect continuous service from June 1962 (entry date of prior active duty) to the present time."
>
> "2. She be promoted to the corresponding temporary and permanent, Reserve of the Air Force, grades as though selected on time with her original 1962 year group."
>
> "3. An Officer Effectiveness Report (OER) rendered on her for the period 1 December 1974 through 31 August 1975 with the evaluation of potential of "3-3-3" be declared void."
>
> "4. Her application for Career Reserve Status (CRS) be approved."

On November 14, 1977 the AFBCMR recommended to the Secretary of the Air Force that plaintiff had, in fact, suffered an injustice and that her records should be corrected to show, *inter alia*, that plaintiff was not discharged in 1965, but had continued to serve on active duty and thus, was entitled to the back

pay she had been deprived of. However, on July 5, 1978, the Secretary, acting through Assistant Secretary Antonia Chayes, remanded plaintiff's application to the AFBCMR.

Assistant Secretary Chayes, while acknowledging the finding that an injustice had occurred warranting correction of plaintiff's records, directed the AFBCMR to explore the feasibility of awarding plaintiff service credit which would not entitle her to back pay "absent more clearcut judicial guidance on retroactive pay and allowances based on unconstitutional separations because of pregnancy." The AFBCMR obediently recommended to the Assistant Secretary that plaintiff's records be corrected to show only that plaintiff's status from September 8, 1965 to July 26, 1974 was in a nonpay, inactive, Reserve status. This recommendation was approved by Assistant Secretary Chayes and implemented on September 9, 1978.

Plaintiff then filed suit in the Court of Claims on June 13, 1980, alleging that the September 8, 1978 decision of the Assistant Secretary was arbitrary and capricious. The Court of Claims ruled that plaintiff's claim arose on September 8, 1965, and thus was time barred.

REASONS WHY THE WRIT SHOULD BE GRANTED

Plaintiff's petition in the Court of Claims (Appendix E) shows that her claim is not based upon a challenge to her discharge in 1965, but upon the action of the Assistant Secretary of the Air Force in 1978, wherein the Assistant Secretary, while finding that an injustice has occurred, directed that plaintiff's records be corrected to show something less that the full relief plaintiff was entitled to, specifically for the purpose of denying back pay and allowances to plaintiff, and for no other reason.

In the cases of *Denton* v. *United States*, 204 Ct. Cl. 188 (1974) and *DeBow* v. *United States*, 193 Ct. Cl. 499, 434 F.2d 133 (1971), wherein the Court of Claims enunciated the doc-

trine that the Secretary, once finding an injustice meriting a correction of a military record could not deny to the applicant the benefits of that finding, this Court denied certiorari (421 U.S. 963 (1975) and 404 U.S. 846 (1971)). While denial of certiorari does not constitute in any way an affirmance, the action of this Court nevertheless allowed those rulings to stand. Plaintiff suggests that her petition is meritorious for the same reasons certiorari was denied in the *Denton* and *DeBow* cases.

The Court of Claims rejected the precedents of *Denton* and *DeBow* in this case on the ground that plaintiff here did not "specifically" ask for back pay in her application to the AFBCMR. However, back pay was implicit in her request that her records be corrected to show that she served on active duty during the period from 1965 to 1974 because her pay entitlement flowed from law as a consequence of status on active duty. (37 U.S.C. § 204 Appendix F).

CONCLUSION

Plaintiff's claim arose in 1978, not in 1965, and the decision in her case should be reversed by this court and remanded for trial on the merits.

Respectfully submitted,

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Appendix

APPENDIX A

IN THE

United States Court of Claims

No. 305-80C

(Decided December 2, 1981)

C. ANNE BONEN

v.

THE UNITED STATES

***John A. Everhard*, Attorney Of Record, For Plaintiff. *Nancy R. Sills*, With Whom Was *Assistant Attorney General Alice Daniel*, For Defendant.**

Before DAVIS, NICHOLS, and KUNZIG, *Judges*.

ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

KUNZIG, *Judge*, delivered the opinion of the court:

This military pay case comes before the court on the parties' cross-motions for summary judgment. By this action, plaintiff seeks a correction of her military records to show continuous active duty during the nine-year separation period following her discharge in 1965 and an award of back pay on the basis of the change in her records pursuant to Title 37 of the United States Code. The government contends that plaintiff's claim arose in 1965 on the date of her discharge and that consequently her suit is time-barred.[1] Plaintiff

[1] In addition to its defense that plaintiff's claim is barred under the six-year statute of limitations of 28 U.S.C. § 2501, defendant argues that plaintiff's suit should be barred by the doctrine of laches, because of plaintiff's nine-year delay in applying to the Correction Board for relief. As we find that plaintiff's suit is barred by the statute of limitations, we do not address defendant's second defense.

counters that the 1978 decision of the Air Force Board for the Correction of Military Records (AFBCMR) granting her "constructive service" gave rise to a new cause of action under the "half-a-loaf" doctrine established in this court. Arguing that the AFBCMR decision recognized the injustice done to plaintiff without affording her an appropriate legal remedy, plaintiff requests that this court overturn the Board decision as arbitrary, capricious and an abuse of discretion. We find plaintiff's argument unpersuasive and hold for the government.

I.

Plaintiff was appointed a Second Lieutenant in the United States Air Force Reserve (Nursing Corps) on April 30, 1962, and began extended active duty in that grade on June 23 of that year. On September 8, 1965, plaintiff was honorably discharged from the Air Force pursuant to Air Force regulation 36-12, which implemented contemporary agency policy of automatic separation of women officers from military service due to pregnancy.

1. Her service and grade data be adjusted to reflect continuous service from June 1962 (entry date of prior active duty) to the present time.

2. She be promoted to the corresponding temporary and permanent, Reserve of the Air Force, grades as though selected on time with her original 1962 year group.

3. An Officer Effectiveness Report (OER) rendered on her for the period 1 December 1974 through 31 August 1975 with the evaluation of potential of "3-3-3" be declared void.

4. Her application for Career Reserve Status (CRS) be approved.

Plaintiff never specifically requested monetary relief or back pay for the period between her discharge and subsequent reinstatement. In fact, she explicitly attempted on several occasions to waive any rights she might have had in that regard, but was informed by the SAFCB Examiner that she would not be allowed to do so.

On November 14, 1977, the AFBCMR recommended that plaintiff's records be corrected to show, *inter alia*,[2] that plaintiff had not been discharged in 1965, but had continued on extended active duty. The Board recognized that plaintiff's petition was not timely filed, applications for review by the AFBCMR requiring filing within three years of the date on which the cause of action arose. 10 U.S.C. § 1552(b) (1976). However, the Board excused the failure to file as it is permitted under its authorizing statute to do "in the interest of justice." Furthermore, the Board found that, despite the fact that plaintiff's discharge had not violated Air Force policies or procedures then in effect, the discharge had worked an injustice on her, pointing out that plaintiff had at all times indicated an "earnest desire to pursue a career in the military." It therefore approved plaintiff's application for the correction of her military records.

On July 5, 1978, Assistant Secretary of the Air Force Antonia Chayes remanded plaintiff's petition to the Board, recommending that the Board explore the feasibility of awarding plaintiff constructive military service instead of active duty credit. Secretary Chayes made this recommendation because of her reluctance, "absent more clearcut judicial guidance on retroactive pay and allowances based on unconstitutional separations because of pregnancy" to give plaintiff a monetary claim through an award of active duty credit. Accordingly, the AFBCMR on August 9, 1978, voted to amend its earlier recommendations so that plaintiff be awarded "constructive service in the Air Force Reserve in lieu of active military service from September 8, 1965 to July 26, 1974." This revised recommendation was implemented on September 9, 1978.

---

[2] The Board also recommended that plaintiff's records be corrected to show: 1) her promotion to captain, United States Air Force Reserve, with date of rank of April 30, 1967, and to major, USAFR, with date of rank of April 30, 1976; 2) An Officer Effectiveness Report for the period December 1, 1974, through August 31, 1975, be removed from her records; 3) she was considered and selected for Career Reserve Status, Air Force Reserves; and 4) she was promoted to temporary grade of major effective June 14, 1977, with date of rank as though she had been selected by the selection board which convened on October 18, 1976. These recommendations are not in issue here.

As a result of the Board's final decision, plaintiff was credited with (1) constructive duty at Headquarters Air Reserve Personnel Center for the separation period; (2) sufficient points to give her satisfactory service for retirement/retention purposes; and (3) promotion to temporary grade of major with a date of rank eight months prior to the effective date of promotion. Plaintiff received no back pay for the separation period since her records showed reassignment to the Reserves rather than active duty. As a result of the records correction, however, her current active duty pay was increased, prospectively increasing her future retirement pay. [3]

Plaintiff filed her petition in this court on June 13, 1980, alleging that the actions of Secretary Chayes and the AFBCMR denying her pay, allowances and active service credit for the separation period were arbitrary and capricious. Plaintiff requests that this court order a correction of her military records to show continuous active duty service from her 1962 enlistment to the present, and payment of military back pay and allowances resulting from the correction.

The government claims that plaintiff's suit for back pay accrued on the date of her allegedly illegal discharge in 1965 and is thus barred by the applicable six-year statute of limitations set out in 28 U.S.C. § 2501 (1976). Defendant contends, therefore, that regardless of the merits of plaintiff's claim, this Court is without jurisdiction to entertain the action.

---

[3] Plaintiff, however, in her March 16, 1979 letter to Assistant Secretary Chayes, argues that the award of constructive duty in the reserves has a negative impact on her retirement prospects. She points out that normally a permanent promotion to the rank of major assures an officer a twenty-year career in the military. This is because the selection for major usually is made in the officer's fourteenth year, and the next promotion comes four years later, in his eighteenth year. Even if he is not selected, he is within the "sanctuary zone" which allows him to go on serving until his twentieth year. A non-selection for promotion prior to the officer's eighteenth year requires him to be automatically separated from service. Plaintiff argues that her permanent promotion to major, without the fourteen years active duty credit to place her within the "sanctuary zone" when she is due for promotion to lieutenant colonel, leaves her vulnerable to such separation.

Plaintiff attempts to counter defendant's jurisdictional argument by claiming that the AFBCMR's decision gave rise to a new cause of action accruing on August 14, 1978, under the "half-a-loaf" doctrine. Thus, plaintiff contends that her suit is not barred by the six-year statute of limitations. Because we find the "half-a-loaf" doctrine inapplicable to the present case, we hold for the government.

II.

It is well settled that a claim such as plaintiff's for an illegal military discharge accrues all at once upon the date of plaintiff's removal. *Eurell* v. *United States*, 215 Ct. Cl. 273, 566 F.2d 1146 (1977); *Kirby* v. *United States*, 201 Ct. Cl. 527 (1973), *cert. denied*, 417 U.S. 919 (1974); *Mathis* v. *United States*, 183 Ct. Cl. 145, 391 F.2d 938 (1968), *aff'd on rehearing*, 190 Ct. Cl. 925, 421 F.2d 703 (1970). In order to be timely, suit must be filed within six years of the date on which the claim first accrues. 28 U.S.C. § 2501 (1976). This court has long held that resort to permissive administrative procedures such as petition to a corrections board does not toll the statute of limitations. *See, e.g., Bruno* v. *United States*, 214 Ct. Cl. 383, 386, 556 F.2d 1104, 1106 (1977); *Brundage* v. *United States*, 205 Ct. Cl. 502, 507, 504 F.2d 1382, 1385 (1974), *cert. denied*, 421 U.S. 998 (1975); *Mathis, supra; Kirk* v. *United States*, 164 Ct. Cl. 738 (1964). Thus plaintiff's mere application to the AFBCMR, even had it been timely, could not have affected the statutory time bar.

Despite the fifteen-year hiatus between plaintiff's discharge and the filing of her claim in this court, plaintiff urges us to consider her claim a "classic case" for application of the "half-a-loaf" enunciated in *Denton* v. *United States*, 204 Ct. Cl. 188 (1974), *cert. denied*, 421 U.S. 963 (1975); *Ray* v. *United States*, 197 Ct. Cl. 1, 453 F.2d 754 (1972); and *DeBow* v. *United States*, 193 Ct. Cl. 499, 434 F.2d 1333 (1970), *cert. denied*, 404 U.S. 846 (1971). Defendant responds that the "half-a-loaf" doctrine is inapplicable where a plaintiff fails to request monetary relief specifically, and thus should not be applied in the instant case, where plaintiff actually attempted to waive such relief. *Homcy* v. *United States*, 210 Ct. Cl. 332, 536 F.2d 360, *cert. denied*, 429 U.S. 984 (1976); *DeBow* v. *United States*, *supra*.

As we pointed out in *Homcy*, *supra*, at 337-38, 536 F.2d at 354, the "half-a-loaf" doctrine normally applies where a corrections board grants plaintiff's claim, but stops short of awarding the full appropriate relief requested by plaintiff. Failure of the board to grant full relief where it is mandated by the records change results in "a new cause of action" or " 'continuing' claim" which revives the statute of limitations. *See Denton*, *supra*, at 195; *Barnes* v. *United States*, 163 Ct. Cl. 321, 328 (1963). Because of the public policy favoring the statute of limitations, the "half-a-loaf" exception is construed narrowly. In order to claim relief under the "half-a-loaf" doctrine, therefore, plaintiff must demonstrate that she requested full relief from the Board and that the Board failed to grant it. *Homcy*, *supra*, at 338. *See also Rumph* v. *United States*, Ct. Cl. No. 511-80C (order of Aug. 14, 1981).

In the instant case, plaintiff requested that "her service and grade data be adjusted to reflect continuous service from June 1962 (entry date of prior active duty) to the present time." She made no specific request for back pay, nor even for active duty credit, which if granted would have entitled her to back pay. In fact, she specifically attempted to waive her rights to monetary relief. The AFBCMR's grant of constructive duty credit balanced the important concerns of justice and fiscal responsibility, allowing plaintiff her full measure of relief while not changing her record so as to mandate monetary damages. In effect, the Board took plaintiff at her word when she disclaimed her desire for back pay. We cannot now hold that plaintiff received "half-a-loaf" from the AFBCMR when it granted her all the relief she requested.

Plaintiff had the right to file a claim in this court immediately upon her discharge for pregnancy in 1965, but she slept on her rights. In view of the change in Air Force policy, the AFBCMR exercised its statutory power to correct a perceived injustice against plaintiff despite the running of the statute on her claim. This court does not have the same freedom to disregard the statutory time bar; we must construe very narrowly any exception to the statute and apply it only under compelling circumstances. No such compelling circumstances exist here. We cannot therefore allow plaintiff to use the Board decision to bootstrap her way over the statute of limitations for her

monetary claim in this court by using the "half-a-loaf" doctrine. Although sometimes unfavorable to a plaintiff, "[t]he statute of limitations is one of finality, designed to protect parties from stale claims and bar the possibility of court suits after a reasonable time has passed." *Homey, supra*, at 337, 536 F.2d at 354. We hold that plaintiff's cause has been effectively barred since 1971 by the normal six-year statute of limitations.

Accordingly, after consideration of the submissions of the parties, with oral argument of counsel, plaintiff's motion for summary judgement is denied. Defendant's motion for summary judgment is granted. Plaintiff's petition is dismissed.

APPENDIX B

IN THE UNITED STATES COURT OF CLAIMS

January 15, 1982

ORDER

PER CURIAM: IT IS ORDERED that the motions of the parties, as set forth, for rehearing, reconsideration or other relief under Rules 7(d), 151 and 152 are DENIED:

581-79C JOHN R. KNIGHTLY

Plaintiff's motion, filed November 23, 1981, for relief from judgment in re decision of May 29, 1981.
(FRIEDMAN, *Chief Judge*, KUNZIG & BENNETT, *Judges*)

305-80C C. ANNE BONEN

Plaintiff's motion filed December 16, 1981, for reconsideration and suggestion of rehearing *en banc* in re decision of December 2, 1981.
(DAVIS, NICHOLS & KUNZIG, *Judges*)

366-80C ANDREW J. DILLON

Plaintiff's motion filed December 17, 1981, for rehearing in re decision of December 1, 1981.
(FRIEDMAN, *Chief Judge*, KASHIWA & BENNET, *Judges*)

658-80C HARRY KENNETH CLARK

Plaintiff's motion filed December 10, 1981, for rehearing or rehearing *en banc* in re decision of November 6, 1981.
(FRIEDMAN, *Chief Judge*, BENNETT & SMITH, *Judges*)

327-81L THE ZUNI INDIAN TRIBE OF NEW MEXICO

Defendant's motion filed December 11, 1981, for rehearing in re decision of November 20, 1981.
(FRIEDMAN, *Chief Judge*, DAVIS & KUNZIG, *Judges*)

APPENDIX C

§ 2501. Time For Filing Suit

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the General Accounting Office fails to act within six months after receiving the account. June 25, 1948, c. 646, 62 Stat. 976; Sept. 3, 1954, c. 1263, § 52, 68 Stat. 1246.

APPENDIX D

§ 1552. Correction Of Military Records: Claims Incident Thereto

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error of injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid —

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the

payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs. Aug. 10, 1956, c. 1041, 70A Stat. 116; June 29, 1960, Pub.L. 86-533, § 1(4), 74 Stat.246.

APPENDIX E

IN THE UNITED STATES COURT OF CLAIMS

No. 305-80 C

C. ANNE BONEN,
73 Country Club Acres
Belleville, IL 62223

Plaintiff,

v.

THE UNITED STATES OF AMERICA

Defendant.

RECEIVED
JUNE 13, 1980
OFFICE OF THE CLERK
U.S. COURT OF CLAIMS

PETITION

To the Honorable Chief Judge and Associate Judges of the United States Court of Claims.

The petition of C. Anne Bonen shows unto this Honorable Court as follows:

1. This petition is filed pursuant to the provisions of 28 United States Code 1491, 10 United States Code 1552 and 37 United States Code, Pay and Allowances of the Uniformed Services.

2. Plaintiff is an adult citizen of the United States residing at 73 Country Club Acres, Belleville, Illinois.

3. Plaintiff entered on military duty with the United States Air Force 23 June 1962. On 8 September 1965 plaintiff was involuntarily discharged from the Air Force because of pregnancy, under applicable Air Force regulations.

4. Plaintiff was reappointed in the Air Force and reinstated on active duty on 26 July 1974 as a result of a change in Department of Defense policy.

5. As the result of an application for correction of her records pursuant to 10 United States Code 1552, the Air Force Board for Correction of Military Records on 14 June 1977 recommended to the Assistant Secretary of the Air Force that plaintiff's records be corrected to show:

a. She was not discharged from all appointments on 8 September 1965 but that she continued on extended active duty.

b. She was promoted to the grade of captain, United States Air Force Reserve, effective and with date of rank of 30 April 1967 and to the grade of major, USAFR, effective and with date of rank of 30 April 1976.

c. The Officer Effectiveness Report, AF Form 707, submitted on her for the period 1 December 1974 through 31 August 1975 be declared void and removed from her records.

d. She was considered and selected for Career Reserve Status in the Line of the Air Force, Air Force Reserve.

e. She was promotd to the temporary grade of Major effective 14 June 1977 with date of rank as though she had been selected by the selection board which convened on 18 October 1976.

As a result of that recommendation, plaintiff would have been entitled to be paid on amount equal to pay and allowances for the period 9 September 1965 to 25 July 1974.

6. On 5 July 1978 the Assistant Secretary of the Air Force remanded plaintiff's case to the Board of Correction of Military Records because the Secretary declined to approve so much of the Board's recommendations as related to back pay for the period 9 September 1965 to 25 July 1974 "absent more clearcut guidance on retroactive pay and allowances based on unconstitutional separations because of pregnancy" and directed the Board to explore the feasibility of awarding constructive service in the Air Force Reserve in a non-pay status.

7. On 9 August 1978 the Board for Correction of Military Records duly voted to revise its recommendation to conform to the

Assistant Secretary's letter of remand, recommending that plaintiff's records be corrected to show that she was a member of the Air Force Reserve not on active duty for the period 9 September 1965 to 25 July 1974. The Assistant Secretary approved the recommendations on 14 August 1978, and plaintiff's records were duly changed.

8. Plaintiff respectfully submits, alleges and declares that the action of the Assistant Secretary of the Air Force in refusing to approve the recommendation of the Air Force Board for Correction of Military Records awarding plaintiff an amount equal to pay for the period 9 September 1965 to 25 July 1974 was arbitrary, capricious, not supported by substantial evidence and contrary to the Constitution of the United States.

WHEREFORE, the premises considered, plaintiff respectfully prays the Court:

a. award plaintiff damages in an amount to be determined under Rule 131(c);

b. direct the Secretary of the Air Force to correct plaintiff's records to show that she served continuously on active duty since 23 June 1962;

c. and for such other and further relief as to the Court may seem proper.

Respectfully submitted,

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APPENDIX F

§ 204. Entitlement

(a) Except for members covered by section 202(i) of this, the following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title —

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 3033, 3496, 3541, 8033, 8496, or 8541 of title 10, or section 503, 504, 505, or 506 of title 32.

(b) For the purposes of subsection (a) of this section, under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active-duty.

(c) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date when he appears at the place of company rendezvous. However, this subsection does not authorize any expenditure before arriving at the place of rendezvous that is not authorize by law to be paid after arrival at that place.

(d) Full-time training, training duty with pay, or other full-time duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his

return home incident to that release may be paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade O-1 beginning upon the date of his graduation.

(g) A member of the Army or the Air Force (other than of the Regular Army or the Regular Air Force) is entitled to the pay and allowances provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever —

(1) he is called or ordered to active duty (other than for training under section 270(b) of title 10) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) he is called or ordered to active duty, or to perform in active-duty training, for any period of time, and is disabled in line of duty from injury while so employed.

(h) A member of the National Guard is entitled to the pay and allowances provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under section 502, 503, 504, or 505 of title 32 —

(1) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) for any period of time, and is disabled in line of duty from injury while so employed.

(i) A member of the Naval Reserve, Fleet Reserve, Marine Corps Reserve, Fleet Marine Corps Reserve, or Coast Guard Reserve is entitled to the pay and allowances provided by law or regulation for

a member of the Regular Navy, Regular Marine Corps, or Regular Coast Guard, as the case may be, of corresponding grade and length of service, under the same conditions as those described in clauses (1) and (2) of subsection (g) of this section. Pub.L. 87-649, Sept. 7, 1962, 76 Stat. 457.